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Group Art Unit: 3738
Examiner: Blanco, J.

Atty. Ref.: Kerr-5

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant : Andrew Kerr
Appl. No. : 09/900,241
Filed : July 6, 2001
For : AXIALLY-CONNECTED STENT/GRAFT ASSEMBLY

MS Appeal Brief-Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

CERTIFICATE OF MAILING

Sir:

I hereby certify that this Reply Brief (in triplicate) is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to "MS Appeal Brief-Patents, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450" service under 37 CFR 1.8(a) on July 25, 2005.

Hilda A. Abreu

Signature of Person Mailing Correspondence



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REPLY BRIEF

Sir:

This Reply Brief is submitted in response to the Examiner's Answer of July 1, 2005. This Reply Brief will rebut issues raised in the Examiner's Answer, but not addressed in the Final Rejection.

"Newly added claim limitations"

The first full paragraph on page 4 of the Answer refers to and quotes from a "newly added claim limitation". The Board should understand that there are no "newly added" claim limitations. The claims on appeal are the same claims that existed when the Examiner issued the Final Rejection. The "newly added" whereby clause quoted in the first full paragraph on page 4 of the Answer actually was added in an Amendment filed on March 10, 2004 based on a recommendation made by Primary Examiner Willse

during the March 9, 2004 interview. That “whereby” clause has been in the claims for over a year and through several responses to Office Actions.

Lap Joint

The Final Rejection used the term “lap joint” to describe the illustrated embodiment of Anderson et al. and then asserted that the term “butt joint” mentioned in Anderson et al. is another Anderson et al. embodiment that corresponds to the claimed invention. This might be a plausible position if Anderson et al. had used “lap joint”. The applicant’s Brief noted that “lap joint” is not used anywhere in the Anderson et al. reference and that “lap joint” is not a term of art for endovascular stent/graf assemblies. The Brief explained that neither counsel nor the applicant had any idea what the Examiner was referring to when he used the term “lap joint” for the first time in the Final Rejection.

Page 5 of the Answer carries the inappropriate “lap joint” analogy further. The Examiner explains that he has conducted a “word search” for “lap joint” using www.onelook.com. The Examiner states that several general-purpose dictionaries define “lap joint” as “a joint made by overlapping two ends or edges and fastening them together.”

The applicant again must emphasize that “lap joint” is used neither in Anderson et al. nor elsewhere in the endovascular stent/graf art. The applicant also must reiterate the previous comments regarding Vanderlande Industry Nederland BV v. ITC, 70 USPQ 2d 1696 (Fed. Cir. 2004). There the Court of Appeals for the Federal Circuit concluded that claims are to be construed from the vantage point of person skilled in the relevant art. Where evidence

"demonstrates that artisans would attach a special meaning to a claim term, or as here, would attach no meaning at all to a claim term (independent of the specification), generally usage dictionaries are rendered irrelevant with respect to that term; a general-usage dictionary cannot overcome credible art-specific evidence of the meaning or lack of a meaning of claim term." *Id.* At 1704.

Here, the Examiner is not attempting to use a general purpose dictionary to define a claim term or even to define a term used in a reference. Rather, the Examiner relies upon a generally purpose dictionary to define a term that the Examiner has chosen to identify the Anderson et al. connection. This permits the Examiner to opine that the butt joint mentioned by Anderson et al. is not the illustrated connection of Anderson et al., but rather the claimed connection. Furthermore, the Examiner has carefully culled the several dictionary definitions at onelook.com to choose a definition that would support his desired interpretation of the term he has thrown into this prosecution. For example, the Examiner has chosen to ignore the following American Heritage Dictionary definition, which also is at onelook.com.

The American Heritage® Dictionary of the English Language: Fourth Edition. 2000.

lap joint



NOUN: A joint, as between two boards or metal parts, in which the ends or edges are overlapped and fastened together, usually so as to produce a flush or continuous surface.

It will be appreciated that the illustration presented above is entirely inconsistent with the term that the Examiner ascribed to the Anderson et al. drawings.

The Examiner also chose to ignore the Wordsmyth definition available through onelook.com where lap joint is defined as “a joint, as of wooden pieces, in which two ends are partly trimmed and then fastened to form a flush surface.” Wikipedia shows still another lap joint where the members extend at right angles to one another. Thus, the Examiner’s increased emphasis on “lap joint” seems to be disingenuous and clearly does not support the final rejection. The simple fact is that the Anderson et al. reference shows only a stent/graft assembly with overlap. Nothing in Anderson et al. supports any connection that is end-to-end with no overlap.

Butt Joint

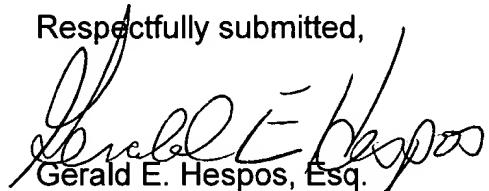
Page 5 of the Examiner’s Answer cites two references that are alleged to support the Examiner’s interpretation of “butt joint” in the medical art. These references were mentioned early in the prosecution. The applicant’s October 12, 2004 response rebutted the Examiner’s interpretation of those references, and the Final Rejection did not mention the references. As noted previously, FIG. 15 of U.S. Patent No. 5,928,281 shows an arrangement where tabs are folded into edge-to-edge relationship with one another and are supported on a backing. FIG. 12 of U.S. Patent No. 6,565,599 illustrates a dovetail-type interconnection between a link and a ring. The text briefly refers to an illustrated butt joint where the end of the link is adhered to the edge of the ring. Thus, one of these patents mentioned in the Answer describes a side-to-side connection and the other describes an end-to-side connection.

It is important to emphasize that the claims on appeal do not use the term “butt joint”. Rather, the claims on appeal specifically define an endovascular stent/graft assembly where the first axial end of the graft means is fixedly connected with the

second axial end of the stent means for achieving an end-to-end connection without overlap. The Anderson et al. reference clearly does not teach or suggest such a connection. The use of the term "butt joint" in U.S. Patent No. 5,928,281 or U.S. Patent No. 6,565,599 does not support the Examiner's position that the "butt joint" mentioned in Anderson et al. defines a well known term of art that reads on the claimed structure.

The Board is requested with respect to reverse the Final Rejection of claims 3 and 25 under 35 USC 102(b) in view of Anderson et al.

Respectfully submitted,



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